

SETTLEMENT AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE LAW SCHOOL ADMISSION COUNCIL, INC.

Department of Justice Complaint Nos. DJ 202-62-34; 55; 56; 62; 79

[Settlement Agreement](#) | [Department of Justice Press Releases](#)

This Agreement is entered into this 22 day of February, 2002, by and between the United States of America, acting through the United States Department of Justice, Civil Rights Division, Disability Rights Section (the "United States"), and the Law School Admission Council, Inc. ("LSAC").

INTRODUCTION AND BACKGROUND FACTS

1. LSAC is a private entity that offers an examination -- the Law School Admission Test, or "LSAT" -- relating to applications for post-secondary education. Thus, LSAC is subject to the requirements of Section 309 of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12189 and 28 C.F.R. § 36.309.
2. The United States Department of Justice (the "Department") is the federal agency responsible for administering and enforcing Title III of the ADA, 42 U.S.C. §§ 12181-12189.
3. Pursuant to Title III of the ADA, private entities that administer examinations relating to applications for post-secondary education must offer the examinations in a place and manner accessible to persons with disabilities. 42 U.S.C. §12189 and 28 C.F.R. §36.309.
4. Pursuant to 42 U.S.C. § 12189 and 28 C.F.R. § 36.309, private entities that administer such examinations are required to provide reasonable modifications to the examination and appropriate auxiliary aids and services

(i.e., testing accommodations) for persons with disabilities to ensure that the “examination results accurately reflect the individual’s aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual’s impaired sensory, manual or speaking skills (except where those skills are the factors that the examination purports to measure).” 28 C.F.R. § 36.309(b)(1)(i). “Required modifications to an examination may include changes in the length of time permitted for completion of the examination.” 28 C.F.R. § 36.309(b)(2). A testing entity is required to provide appropriate auxiliary aids and services for persons with impaired sensory, manual or speaking skills that result in a substantial limitation in one or more major life activities, unless that entity can demonstrate that offering a particular auxiliary aid would fundamentally alter the measurement of the skills or knowledge the examination is intended to test or result in an undue burden. 28 C.F.R. § 36.309(b)(3) .

5. Pursuant to 28 C.F.R. Part 36, App. B, at 690 (2001), private entities that offer such examinations may require individuals with disabilities who request testing accommodations to provide appropriate documentation of their disability and the need for the requested testing accommodations. Requests for documentation must, however, be reasonable and limited to the need for the modification or auxiliary aid or service requested.

6. Pursuant to the Attorney General’s authority under 42 U.S.C. § 12188(b)(1)(A)(i) to conduct investigations of alleged violations of Title III of the ADA, the Department investigated complaints it had received that the LSAC had failed to grant reasonable testing accommodations for administrations of the LSAT that were requested by individuals with disabilities.

7. As a result of these investigations, the Department concluded that LSAC had requested unreasonable documentation from certain individuals with disabilities and that LSAC had impermissibly denied these individuals testing accommodations.

8. LSAC disputes the Department’s conclusions and categorically denies that LSAC had requested unreasonable documentation from any individual, including the complainants identified by the Department, or that LSAC impermissibly denied them testing accommodations.

9. After negotiations with LSAC seeking to resolve the Department’s investigation against LSAC without resort to litigation failed, the Department filed a complaint against LSAC under Title III of the ADA. The case is captioned United States of America v. Law School Admission Council, Inc., Civil Action No. 99-CV-6209, and is pending in the United States District Court for the Eastern District of Pennsylvania (the “Lawsuit”). The Lawsuit alleges that LSAC discriminated against certain named individuals with disabilities by denying reasonable testing accommodations to them, and potentially to other persons with physical disabilities who sought testing accommodations to take the LSAT, in violation of Title III of the ADA, 42 U.S.C. §§ 12181-12189. In its answer to the Department’s complaint in the Lawsuit, LSAC denies that it has violated the ADA and denies that the Department or any of the individuals referenced in the complaint are entitled to any of the relief requested by the Department.

10. LSAC and the Department (collectively, the “Parties”) have reached agreement that it is in the Parties’ best interests, and the Department believes it is in the public interest, to fully and finally resolve this matter on mutually agreeable terms without further litigation, and have, therefore, agreed to enter into this Agreement.

WHEREFORE, the Parties hereby agree and stipulate as follows:

AGREEMENT TERMS

11. This Agreement pertains to the manner in which LSAC handles requests for test accommodations that are based exclusively upon one or more physical disabilities as documented in a Physical Evaluation Report or

Vision Evaluation Report (see paragraph 22, below). It does not address LSAC's handling of requests for accommodations from individuals where the request is based on a learning disability, ADHD/ADD, a psychological or psychiatric impairment, or other non-physical impairments.

DOCUMENTATION

12. LSAC may request reasonable documentation from individuals who seek testing accommodations (i.e., modifications, auxiliary aids or services) for an administration of the LSAT on the basis of disability.

13. Requests for documentation shall be limited to documentation that: (a) establishes the existence of a disability; (b) describes how the Candidate's functional limitations impact his or her ability to take the LSAT; and (c) demonstrates the need for the accommodation.

14. LSAC shall not make inquiries into or ask for documentation of a person's physical or mental condition that are unrelated to the impaired function for which the Candidate seeks accommodation. For example, LSAC will not request a psychoeducational assessment, or a similar battery of tests, from a Candidate who seeks an accommodation for an impairment that is identified by the Evaluator as exclusively physical in nature.

EVALUATING REQUESTS

15. LSAC will, in good faith, conduct an individualized assessment of each request for testing accommodations based upon the documentation submitted in accordance with the documentation policies set forth in this Agreement. In conducting its individualized assessment to determine whether a request for testing accommodations should be granted, LSAC will adhere to the following policies.

A. Absent a misrepresentation by the Candidate or Evaluator, LSAC will grant the requested test accommodations where a Candidate submits the following documentation:

1. The Evaluator Form and Evaluation Report that address the Candidate's condition and how it affects the Candidate's ability to take the LSAT under standard conditions;
2. Documentation of a history of use of the requested accommodation or comparable accommodation on other standardized admissions tests; and
3. The Candidate Form.

B. For those individuals who do not have the documentation described in paragraph 15(A)(2) above, LSAC will give considerable weight to the recommendation of the Candidate's Evaluator where the Evaluator provides the documentation required in the Evaluator Form and the Evaluation Report of the Candidate's condition and how it affects the Candidate's ability to take the LSAT under standard conditions. With respect to individuals covered by this Agreement, LSAC will not deny accommodations on the basis of a prior score on a standardized admissions test.

C. LSAC shall provide breaks during test sections where a Candidate and Evaluator have submitted documentation that establishes the need for this accommodation. If an individual is granted the accommodation of breaks "as needed," the proctor will stop the clock during the break and, upon resuming the test, the individual will be permitted to continue work on all questions in the test section.

D. LSAC is not required to provide an accommodation that would fundamentally alter what the

LSAT is intended to test; jeopardize exam security; or, in the case of auxiliary aids and services, result in an undue burden.

SUPPLEMENTAL DOCUMENTATION AND COMMUNICATIONS WITH CANDIDATES

16. Communications with Candidates. LSAC will communicate with Candidates, or those acting on their behalf, to help them resolve documentation issues in a timely manner, including incomplete documentation and discrepancies in documentation. LSAC will e-mail correspondence regarding the disposition of accommodation requests, or its need for additional information, to those candidates who elect to receive correspondence via e-mail.

17. Alternative Accommodations. Where LSAC provides an alternative accommodation, rather than the accommodation(s) requested, LSAC will notify the Candidate that it has granted an alternative accommodation to the one requested, and inform the Candidate of his/her right to seek reconsideration of the determination, as described in paragraph 20.

18. Guidance for Providing Supplemental Documentation. When LSAC deems the documentation submitted in support of a request for testing accommodations insufficient to establish (i) the individual's disability; (ii) the individual's functional limitations in relation to taking the LSAT; or (iii) the need for the requested accommodations, LSAC will promptly notify the Candidate in writing that the documentation is deemed insufficient.

A. LSAC will provide a clear explanation as to why the submitted documentation is deemed insufficient and shall indicate what specific additional information might cure the documentation problem identified by LSAC. As a general rule, LSAC shall not request any tests or data beyond those referenced in the Evaluation Reports attached to this Agreement, and will not require diagnostic or functional tests that are not commonly utilized by the medical community.

B. If a Candidate cures identified defects in the documentation by the applicable deadline for reconsideration, LSAC shall consider the application for testing accommodations for the requested administration of the LSAT and conduct an individualized assessment of the supplemental documentation as provided above.

C. If LSAC receives documentation from a Candidate that has some inconsistency or is unclear (e.g., the Candidate and Evaluator request different amounts of additional time), LSAC will make its decision regarding the accommodation request based on a reasonable interpretation of the forms and reports and inform the Candidate of its determination. In any event, LSAC shall not deny requests for reasonable accommodations simply because of an inconsistency in the request.

19. Explanation to be Provided for Denial of Request for Testing Accommodations. If a request for testing accommodations is denied because LSAC determines that the testing accommodations are not warranted based upon the documentation provided, LSAC will promptly notify the Candidate in writing of such denial and provide a clear written explanation of why the requested accommodations were denied. The denial letter will inform the Candidate that he/she may request reconsideration of this decision by the applicable deadline.

20. Reconsideration of Denials of Requests for Testing Accommodations. LSAC shall continue to provide a process by which Candidates can seek reconsideration of denials of testing accommodations by LSAC. The reconsideration process shall permit a Candidate to submit additional information. All requests for

reconsideration and supporting documentation must be received by the Receipt Deadline for Accommodations in order to be considered for the requested test date. When reconsidering requests for test accommodations, LSAC will take into account the Candidate's entire record of documentation, including prior documentation and the Candidate's own description of his/her functional limitations.

REVIEW BY OUTSIDE MEDICAL EXPERT

21. Where LSAC does not have the requisite knowledge to evaluate the request or supporting documentary evidence, or LSAC determines that it would be helpful to have additional input with respect to a certain disability, its resulting functional limitations, or the accommodations requested, LSAC will, when it deems appropriate, refer the request to a consultant who is a qualified professional with respect to the disability at issue. LSAC will ask the consultant to review the documentary evidence submitted by the Candidate and offer his/her opinion regarding the request for testing accommodations.

REVISED GUIDELINES AND FORMS

22. LSAC shall utilize the "Physical Evaluation Report" and the "Vision Evaluation Report," the current versions of which are attached hereto as Exhibits A and B, respectively, in place of the Guidelines for Documentation of a Physical Disability and the Guidelines for Documentation of a Visual Disability that LSAC is currently using.

23. LSAC shall utilize a revised Candidate Form and revised Evaluator Form, the current versions of which are attached hereto as Exhibits C and D, respectively. In approving the forms attached hereto as Exhibit C - D, the Department takes no position on the inclusion of information about scores and percentile ranking on prior standardized tests.

24. LSAC may modify the Reports and Forms appearing as Exhibits A - D as appropriate to respond to changes in circumstances or its operational experiences. Any modifications shall be consistent with the terms of this Agreement, and shall not seek information unrelated to the Candidate's ability to take the LSAT.

RELIEF

25. Monetary Payment. In the interest of resolving this matter amicably, LSAC will pay \$20,000 to DOJ within thirty (30) days after entry of the Order of Dismissal by the Court.

26. Testing Accommodation. In the event Debbie Dase wants to take the LSAT again, LSAC will provide her with the accommodations that she requested for the October, 1999 administration of the LSAT.

ADDITIONAL TERMS

27. Reporting Requirements. For a period of five years, beginning with individuals who request accommodations on the June 2002 administration of the LSAT, LSAC shall provide the Department with an annual report of its disposition of requests for accommodations. Each report shall be provided within 90 days after the February administration of the LSAT. The purpose of the report is to enable the Parties to monitor the number and type of accommodation requests received by LSAC from individuals with physical disabilities, and the disposition of those requests. The report shall provide the information set forth in Exhibit E of this Agreement.

28. Monitoring. The Department may review compliance with this Agreement at any time. If the Department believes that LSAC is not in compliance with this Agreement or any requirement contained herein, the Department agrees to notify LSAC in writing of the alleged noncompliance and to provide copies of any relevant complaints filed with or made to the Department. LSAC shall have thirty (30) days to respond to the Department regarding the alleged non-compliance, and the Parties will attempt in good faith to resolve the matter informally. If the Parties are unable to reach a resolution, the Department may, by motion, re-open the docket in the Lawsuit and seek appropriate relief from the United States District Court for the Eastern District of Pennsylvania. Failure by the Department to seek enforcement of or relief under this Agreement, or any of its provisions, shall not be construed as a waiver of the United States' rights under this Agreement. If the Court determines that LSAC has violated the terms of this Agreement and the ADA, LSAC shall be subject to all available remedies under the ADA.

29. Resolution of the Litigation. Upon execution of this Agreement, the Parties will jointly request that the Court enter final judgment dismissing with prejudice all claims asserted in this lawsuit against LSAC, with each party to bear its own costs. The Order of Dismissal shall be signed by the Court. The Order will specifically incorporate the Parties' Agreement and provide that the Court shall retain jurisdiction of this action for purposes of enforcing this Agreement or resolving any disputes under this Agreement. The Court's jurisdiction shall continue for five (5) years from the date of the Agreement, unless the United States makes an appropriate motion for the Court to retain jurisdiction beyond the five year period, and the Court, in its sole discretion, grants the motion.

30. Termination of Complaints. The Department will terminate its investigation of, and close, Department of Justice Complaints No. DJ 202-62-34; -55; -56; -62 and 79.

31. No Admission. The Parties agree that this Agreement is neither an admission by LSAC of any violation of the ADA, nor an admission by the Department of the merits of any of LSAC's defenses.

32. Notice. All notices and other correspondence sent by the Parties to one another relating to this Agreement shall be sent to the Parties at the following addresses or at such other address as the Parties may designate in writing in the future:

For correspondence to the Department:

John L. Wodatch, Chief
Disability Rights Section
Civil Rights Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Room 4039
P. O. Box 66738
Washington, D.C. 20035-6738

For correspondence to LSAC:

Joan E. Van Tol, Corporate Counsel
Law School Admission Council, Inc.
P. O. Box 40
Newtown, Pennsylvania 18940-0040

33. Agreement is a Public Document. This Agreement is a public document. A copy of this document, or any information contained herein, may be made available to any person. The Parties shall provide a copy of this Agreement to any person or entity upon request.

34. Agreement Binding on Parties and Successors in Interest. This Agreement shall be binding on the Parties, and their successors in interest, and LSAC shall have a duty to so notify all such successors in interest of the existence and terms of this Agreement.

35. Releases. The Department will obtain a signed Release from John Gordon, Christopher McCormick, Deborah Dase, Shawn Murinko, and Stacie Sparks in the form attached as Exhibit F to this Agreement.

36. No Retaliation. LSAC agrees that it will not discriminate or retaliate against any person because of his/her participation as a complainant in this matter.

37. Authorization of Signatories. The individuals signing this Agreement represent that they are authorized to bind the Parties to this Agreement.

38. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by the Parties or agents of the Parties, that is not contained in this written Agreement and its Attachments/Exhibits, shall be enforceable regarding the matters raised herein.

39. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

So Agreed:

UNITED STATES OF AMERICA

LAW SCHOOL ADMISSION COUNCIL, INC.

By: _____
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May 31, 2011